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26 **UNITED STATES DISTRICT COURT**
27 **NORTHERN DISTRICT OF CALIFORNIA**
28 **SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

Case No. 3:23-md-03084-CRB

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA,
LLC’S REPLY SUPPORTING MOTION TO
DISMISS CASES FOR FAILURE TO
COMPLY WITH PTO 10 [ECF 3731]**

This Document Relates to:

*Jane Doe LS 37 v. Uber Technologies,
Inc., et al., No. 3:23-cv-04393-CRB*

Judge: Honorable Charles R. Breyer
Date: October 3, 2025
Time: 10:00 a.m.
Courtroom: 6 – 17th Floor

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| 1 | <i>In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.</i> , | |
| 2 | 496 F.3d 863 (8th Cir. 2007) | 2 |
| 3 | <i>Hilton v. Pagani Worldwide LLC</i> , | |
| 4 | No. 19-cv-01848-VC, 2020 WL 2528935 (N.D. Cal. April 16, 2020)..... | 11, 12 |
| 5 | <i>Hoffman v. Constr. Protective Servs., Inc.</i> , | |
| 6 | 541 F.3d 1175 (9th Cir. 2008) | 6 |
| 7 | <i>Holley v. Gilead Sciences, Inc.</i> , | |
| 8 | No. C-18-6972 JST (N.D. Cal. Jan. 21, 2021)..... | 8 |
| 9 | <i>Honnevk v. Farmers New World Life Ins. Co.</i> , | |
| 10 | No. 1:11-cv-153, 2013 WL 6839605 (E.D. Cal. Dec. 23, 2013)..... | 10 |
| 11 | <i>Horsley v. United States</i> , | |
| 12 | No. 83-cv-0102, 1985 WL 2655 (N.D. Cal. June 5, 1985)..... | 11 |
| 13 | <i>ILWU-PMA Welfare Plan Board of Trustees v.</i> | |
| 14 | No. 15-cv-2965, 2017 WL 345988 (N.D. Cal. Jan 24, 2017)..... | 9 |
| 15 | <i>Jackson v. United States</i> , | |
| 16 | 116 F.3d 484 (C.D. Cal. June 5, 1997) | 11 |
| 17 | <i>Johnson v. Williams</i> , | |
| 18 | No. 2:20-cv-01835, 2025 WL 2401323 (D. Nev. Aug. 1, 2025)..... | 2, 6 |
| 19 | <i>Karnazes v. Cnty. of San Mateo</i> , | |
| 20 | No. 09-cv-0767, 2010 WL 1910522 (N.D. Cal. May 11, 2010)..... | 10 |
| 21 | <i>In re Korean Air Lines Co.</i> , | |
| 22 | 642 F.3d 685 (9th Cir. 2011) | 8 |
| 23 | <i>Malone v. U.S. Postal Serv.</i> , | |
| 24 | 833 F.2d 128 (9th Cir. 1987) | 2, 7, 9, 13 |
| 25 | <i>Mattingly v. United States</i> , | |
| 26 | 939 F.2d 816 (9th Cir. 1991) | 12 |
| 27 | <i>In re Mirena IUD Prods. Liab. Litig.</i> , | |
| 28 | No. 13-MD-2434, 2015 WL 10433457 (S.D.N.Y. Mar. 5, 2015)..... | 2 |
| | <i>Pagtalunan v. Galaza</i> , | |
| | 291 F.3d 639 (9th Cir. 2002) | 7 |
| | <i>In re Phenylpropanolamine Prods. Liab. Litig.</i> , | |
| | 460 F.3d 1217 (9th Cir. 2006) | 1, 9, 10 |
| | <i>Ruelas v. Alameda Cnty.</i> , | |
| | No. 19-cv-07637, 2023 WL 8173675 (N.D. Cal. April 14, 2023)..... | 12 |

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| 1 | <i>Sanchez v. Autozone, Inc.</i> , | |
| 2 | No. 14-cv-1347, 2018 WL 6137165 (C.D. Cal. March 27, 2018)..... | 8 |
| 3 | <i>Shanko v. Lake Cnty.</i> , | |
| 4 | No. 14-cv-5543, 2016 WL 9047117 (N.D. Cal. Feb. 2, 2016)..... | 8 |
| 5 | <i>Sotoodeh v. City of South El-Monte</i> , | |
| 6 | No. 24-3848, 2025 WL 1409493 (9th Cir. May 15, 2025)..... | 3 |
| 7 | <i>Spears v. Baldwin Park Unified Sch. Dist.</i> , | |
| 8 | No. 24-1428, 2025 WL 2028305 (9th Cir. July 21, 2025)..... | 2, 4 |
| 9 | <i>In re Taxotere (Docetaxel) Prods. Liab. Litig. (In re Taxotere)</i> , | |
| 10 | 966 F.3d 351 (5th Cir. 2020) | 1 |
| 11 | <i>Temujin Labs Inc. v. Translucence Research, Inc.</i> , | |
| 12 | No. 21-cv-9152, 2025 WL 277402 (N.D. Cal. Jan. 23, 2025)..... | 8 |
| 13 | <i>Torres v. General Motors LLC</i> , | |
| 14 | No. 24-cv-02474-BEN-JLB, 2025 WL 1435524 (S.D. Cal. May 16, 2025)..... | 11 |
| 15 | <i>In re Toy Asbestos</i> , | |
| 16 | No. 19-cv-00325-HSG, 2021 WL 1056552 (N.D. Cal. March 19, 2021) | 6 |
| 17 | <i>United States v. \$133,420.00 in U.S. Currency</i> , | |
| 18 | 672 F.3d 629 (9th Cir. 2012) | 10 |
| 19 | <i>United States v. Passegger</i> , | |
| 20 | No. 5:22-cv-875, 2025 WL 2074359 (C.D. Cal. March 6, 2025)..... | 12 |
| 21 | <i>Young v. Cnty. of Alameda</i> , | |
| 22 | No. 24-cv-3914, 2025 WL 1237558 (N.D. Cal. April 28, 2025)..... | 12 |
| 23 | <i>In re Zicam Cold Remedy Mktg., Sales Pracs., & Prods. Liab. Litig.</i> , | |
| 24 | No. 09-md-2096, 2011 WL 3438862 (D. Ariz. Aug. 5, 2011)..... | 2 |
| 25 | Rules | |
| 26 | Fed. R. Civ. P. 37 | 2, 6 |
| 27 | Fed. R. Civ. P. 41 | 3, 12 |
| 28 | Fed. R. Civ. P. 41(b) | 12 |

MEMORANDUM OF POINTS AND AUTHORITIES

In their Motion to Dismiss Cases for Failure to Comply with PTO 10, Defendants Uber Technologies, Inc., Rasier, LLC, and Rasier-CA, LLC (collectively, “Uber”) established that certain Plaintiffs had failed to produce a substantially complete Plaintiff Fact Sheet (“PFS”) despite this Court’s order directing many of them to do so more than a year ago. ECF No. 348 at 5-7. The deficiencies in these Plaintiffs’ PFS were not minor or subject to interpretation, but consisted of failure to do one or more of four things this Court specifically ordered Plaintiffs to do: (1) answer all applicable questions, (2) include a signed verification, (3) provide executed record release authorizations, and (4) produce the supporting documents requested in the PFS.¹ *Id.* These Plaintiffs’ violation of the Court’s order impairs Uber’s ability to defend itself in this MDL. *See Computer Task Group, Inc. v. Brody*, 364 F.3d 1112, 1116 (9th Cir. 2004). Plaintiffs claim that “these cases pose no greater risk to Uber than any unfiled case” because “bellwethers have already been selected” and the production “will not have a substantial impact on the timeline of the bellwether cases set for trial.” ECF 3843 at 7, 10. But there is no rule permitting someone to: (i) click on an internet ad; (ii) remain submerged as a non-bellwether Plaintiff, in this case violating Court orders; and (iii) “resurface” for a settlement check. Uber’s request that the Court issue one final order compelling Plaintiffs to cure the deficiencies in their PFS within 14 days or face dismissal with prejudice is entirely reasonable.

Effective management of the Court’s docket, the public’s interest in a quick resolution, the prejudice to Uber from delay and overall lack of participation from Plaintiffs in this litigation, and the inadequacy of lesser sanctions favor this result. *See Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406,

¹ In its Response, the Levin Simes firm asserts that “[i]t is unclear from Uber’s moving papers what it means by a missing production.” ECF No. 3856 at n.1. Respectfully, Uber’s motion was quite clear that it was referring to some Plaintiffs’ failure to produce the supporting documents that this Court ordered should be produced with the PFS and the PFS outlines when a response triggers a production requirement. ECF No. 3731 at 1 (citing PTO 10, ECF No. 348 at 6-7, which in turn states that, to be considered “substantially complete,” a PFS must be accompanied by a production of “the requested documents to the extent such documents are in the Party’s possession, custody, or control.”)

1 1412 (9th Cir. 1990). Indeed, courts have repeatedly ordered cases to be dismissed with prejudice
 2 under similar circumstances. *See, e.g., In re Phenylpropanolamine Prods. Liab. Litig.*, 460 F.3d 1217,
 3 1234 (9th Cir. 2006); *In re Taxotere (Docetaxel) Prods. Liab. Litig. (In re Taxotere)*, 966 F.3d 351,
 4 354 (5th Cir. 2020); *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863,
 5 865-66 (8th Cir. 2007); *In re Mirena IUD Prods. Liab. Litig.*, No. 13-MD-2434, 2015 WL 10433457,
 6 at *2 (S.D.N.Y. Mar. 5, 2015); *In re Zicam Cold Remedy Mktg., Sales Pracs., & Prods. Liab. Litig.*,
 7 No. 09-md-2096, 2011 WL 3438862, at *2 & n.1 (D. Ariz. Aug. 5, 2011).

8
 9 Some of the Plaintiffs who failed to submit substantially complete PFS have not responded to
 10 Uber's motion, and for that reason alone the motion should be granted as to those Plaintiffs. *Spears v.*
 11 *Baldwin Park Unified Sch. Dist.*, No. 24-1428, 2025 WL 2028305, at *1 (9th Cir. July 21, 2025).
 12 Other Plaintiffs² have responded, but only to state that they have cured any PFS deficiencies and
 13 therefore should be removed from the motion, which Uber does not oppose. A number of Plaintiffs
 14 argue that Uber's motion should be denied because it did not meet and confer before filing it, perhaps
 15 unaware of the numerous court decisions holding that motions for sanctions under Rule 37 are not
 16 discovery motions that would be subject to the meet and confer requirement. *See, e.g., Endurance Am.*
 17 *Specialty Ins. Co. v. Lance-Kashian & Co.*, No. 10-cv-1284, 2011 WL 4841285, at *3 (E.D. Cal. Oct.
 18 12, 2011); *Johnson v. Williams*, No. 2:20-cv-01835, 2025 WL 2401323, at *2 (D. Nev. Aug. 1, 2025).
 19 Only a few Plaintiffs even engage on the application of the factors for dismissal outlined in *Malone v.*
 20 *U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987). However, the cases they cite actually favor
 21 dismissal of their cases and the hypothetical excuses they offer are vague and insufficient to allow
 22 them to indefinitely violate court orders with impunity as they request. Uber's requested relief, which
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 24

25
 26 ² Anapol Weiss (ECF No. 3781), Peiffer Wolf Carr Kane Conway & Wise, LLP (ECF No. 3831), the Wagstaff Law
 27 Firm (ECF No. 3841), Nachawati Law Group (ECF No. 3843), Simmons Hanly Conroy, LLP (ECF No. 3844), William
 28 Hart & Bondas, LLP (ECF No. 3847), Cutter Law PC (ECF No. 3853), and Levin Simes LLP (ECF No. 3856) have all
 filed Responses on behalf of their clients. Uber's Reply addresses all of these responses in a single filing for this Court's
 convenience.

affords Plaintiffs additional time to comply with this Court's order of more than a year ago but not a blank check to continue to shirk their obligations for as long as they see fit, is entirely reasonable.

ARGUMENT

I. Two dozen Plaintiffs have not responded to Uber's Motion and therefore should be deemed to have consented to the relief sought.

The Meyer Wilson firm, representing the Plaintiff in *M.S. v. Uber Technologies, Inc., et al.*, No. 3:25-cv-01863-CRB, did not file a response in opposition to Uber's Motion to Dismiss. Neither did the Pulaski Law Firm, PLLC, which represents more than a dozen relevant Plaintiffs:

B.B. v. Uber Technologies, Inc., et al., No. 3:24-cv-7492-CRB
A.A. v. Uber Technologies, Inc., et al., No. 3:24-cv-7549-CRB
S.G. v. Uber Technologies, Inc., et al., No. 3:24-cv-8675-CRB
T.K. v. Uber Technologies, Inc., et al., No. 3:25-cv-1651-CRB
S.W. v. Uber Technologies, Inc., et al., No. 3:25-cv-1658-CRB
C.C. v. Uber Technologies, Inc., et al., No. 3:25-cv-1707-CRB
T.C. v. Uber Technologies, Inc., et al., No. 3:25-cv-2109-CRB
A.M. v. Uber Technologies, Inc., et al., No. 3:25-cv-2510-CRB
J.H. v. Uber Technologies, Inc., et al., No. 3:25-cv-2526-CRB
A.J. v. Uber Technologies, Inc., et al., No. 3:25-cv-2577-CRB
N.K. v. Uber Technologies, Inc., et al., No. 3:25-cv-2681-CRB
T.M. v. Uber Technologies, Inc., et al., No. 3:25-cv-2704-CRB
S.F. v. Uber Technologies, Inc., et al., No. 3:25-cv-2708-CRB
M.H. v. Uber Technologies, Inc., et al., No. 3:25-cv-2859-CRB
K.T. v. Uber Technologies, Inc., et al., No. 3:25-cv-2880-CRB
T.P. v. Uber Technologies, Inc., et al., No. 3:25-cv-3016-CRB
V.R. v. Uber Technologies, Inc., et al., No. 3:25-cv-4767-CRB

Similarly, Kherkher Garcia, LLP, counsel of record in *Jane Doe 693827 v. Uber Technologies, Inc. et al*, No. 3:24-cv-9515-CRB and *Jane Doe 639535 v. Uber Technologies, Inc., et al.*, No. 3:24-9523-CRB, did not file an opposition, nor did Cohen Hirsch, LP, for the Plaintiff in *D.C. 2636 v. Uber Technologies, Inc., et al.*, No. 3:24-cv-9367-CRB, or Justice Law Collaborative for *E.D. v. Uber Technologies, Inc., et al.*, No. 3:23-cv-5307-CRB. Beyond this, two pro se Plaintiffs also failed to oppose Uber's motion to dismiss, in *C.B. v. Uber Technologies, Inc., et al.*, No. 3:24-cv-9049-CRB and *D.J. v. Uber Technologies, Inc., et al.*, No. 3:24-cv-9050-CRB.

"Plaintiff's failure to respond may be interpreted as nonopposition." *George v. United States*, 901 F.Supp.2d 1179, 1188 (N.D. Cal. 2012). This is true even for *pro se* plaintiffs, who are bound by

the rules of procedure like any other litigant. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). And unopposed motions can be granted as a sanction under Rule 41. *Sotoodeh v. City of South El-Monte*, No. 24-3848, 2025 WL 1409493, at *2 (9th Cir. May 15, 2025). Even in the context of case-terminating motions to dismiss, failure to respond is deemed to be consent to the motion being granted. *Spears*, 2025 WL 2028305, at *1. Thus, because these two dozen Plaintiffs compounded their failure to produce substantially complete PFS by failing to timely oppose Uber's motion to dismiss, the motion should be granted as to those Plaintiffs.

II. Uber withdraws its motion as to Plaintiffs who have produced PFS with all questions answered, accompanied by signed verifications, record releases, and the production of supporting documentation.

Several law firms have responded to Uber's motion to dismiss by stating that they have produced substantially complete PFS on behalf of some of the Plaintiffs at issue. ECF No. 3781; ECF No. 3831; ECF No. 3841; ECF No. 3844; ECF No. 3847; ECF No. 3856. Uber has confirmed that the following Plaintiffs have in fact produced PFS with all questions answered, accompanied by signed verifications, record releases, and the production of supporting documentation:

B.B. v. Uber Technologies, Inc., et al., 3:24-cv-4845-CRB
E.O. v. Uber Technologies, Inc., et al., 3:24-cv-4905-CRB
E.N. v. Uber Technologies, Inc., et al., 3:24-cv-4903-CRB
M.E. v. Uber Technologies, Inc., et al., 3:24-cv-5033-CRB
H.H. v. Uber Technologies, Inc., et al., 3:24-cv-4673-CRB
B.B. v. Uber Technologies, Inc., et al., 3:24-cv-5265-CRB
T.C. v. Uber Technologies, Inc., et al., 3:24-cv-5356-CRB
C.G. v. Uber Technologies, Inc., et al., 3:24-cv-5572-CRB
S.L. v. Uber Technologies, Inc., et al., 3:24-cv-5591-CRB
M.L. v. Uber Technologies, Inc., et al., 3:24-cv-5706-CRB
C.P. v. Uber Technologies, Inc., et al., 3:24-cv-5835-CRB
B.D. v. Uber Technologies, Inc., et al., 3:24-cv-5968-CRB
D.W. v. Uber Technologies, Inc., et al., 3:24-cv-5604-CRB
A.E. v. Uber Technologies, Inc., et al., 3:24-cv-5613-CRB
S.G. v. Uber Technologies, Inc., et al., 3:24-cv-5812-CRB
F.W. v. Uber Technologies, Inc., et al., 3:24-cv-6029-CRB
A.L. v. Uber Technologies, Inc., et al., 3:24-cv-5422-CRB
D.J. v. Uber Technologies, Inc., et al., 3:24-cv-8785-CRB

J.H. v. Uber Technologies, Inc., et al., 3:24-cv-9201-CRB³
E.H. v. Uber Technologies, Inc., et al., 3:24-cv-8342-CRB
E.B. v. Uber Technologies, Inc., et al., 3:24-cv-9052-CRB
P.M. v. Uber Technologies, Inc., et al., 3:25-cv-1098-CRB
J.M. v. Uber Technologies, Inc., et al., 3:25-cv-1101-CRB
A.N. v. Uber Technologies, Inc., et al., 3:25-cv-1122-CRB
J.R. v. Uber Technologies, Inc., et al., 3:25-cv-1130-CRB
S.W. v. Uber Technologies, Inc., et al., 3:25-cv-1179-CRB
S.G. v. Uber Technologies, Inc., et al., 3:25-cv-1417-CRB
L.H. v. Uber Technologies, Inc., et al., 3:25-cv-2104-CRB
L.T. v. Uber Technologies, Inc., et al., 3:25-cv-2405-CRB
J.M. v. Uber Technologies, Inc., et al., 3:25-cv-2689-CRB
M.L. v. Uber Technologies, Inc., et al., 3:25-cv-2498-CRB
D.A. v. Uber Technologies, Inc., et al., 3:25-cv-3262-CRB
V.B. v. Uber Technologies, Inc., et al., 3:25-cv-3378-CRB
V.M. v. Uber Technologies, Inc., et al., 3:25-cv-3591-CRB
C.L. v. Uber Technologies, Inc., et al., 3:25-cv-3969-CRB
B.D. v. Uber Technologies, Inc., et al., 3:25-cv-3976-CRB
S.S. v. Uber Technologies, Inc., et al., 3:25-cv-4143-CRB
C.E. v. Uber Technologies, Inc., et al., 3:25-cv-4100-CRB
W.M. v. Uber Technologies, Inc., et al., 3:25-cv-4717-CRB
K.N. v. Uber Technologies, Inc., et al., 3:25-cv-4719-CRB
R.H. v. Uber Technologies, Inc., et al., 3:25-cv-4725-CRB
L.K. v. Uber Technologies, Inc., et al., 3:25-cv-4774-CRB
S.K. v. Uber Technologies, Inc., et al., 3:25-cv-4768-CRB
T.P. v. Uber Technologies, Inc., et al., 3:25-cv-4766-CRB
B.W. v. Uber Technologies, Inc., et al., 3:25-cv-4796-CRB
G.G. v. Uber Technologies, Inc., et al., 3:25-cv-4798-CRB
D.C. v. Uber Technologies, Inc., et al., 3:25-cv-4851-CRB

Uber therefore withdraws its motion as to these Plaintiffs⁴, although it reserves any other potential arguments regarding the sufficiency of these Plaintiffs' PFS submissions.

III. Uber's motion to dismiss was not a discovery motion and it was therefore not required to meet and confer before filing it under Local Rule 37-1.

³ The Opposition submitted by the Cutter Law P.C. Plaintiffs (ECF 3853) implies that Uber incorrectly included Jane Roe CL 90 in its Motion for failing to provide a signed record release authorization. Not true. Rather, after Uber filed its Motion, Jane Roe CL 90 submitted an amended PFS in which she changed her answer to certain questions, thereby alleviating her duty provide the missing signed record release authorization.

⁴ Uber also withdraws its motion as to Jane Doe WHB 1021, No. 3:24-cv-05466; Jane Doe WHB 1856, No. 3:24-cv-05461; and Jane Doe WHB 2063; 3:25-cv-01099. Uber inadvertently omitted the deficiencies that serve as the basis for these plaintiffs' inclusion in this motion from the deficiency notices that Uber sent to these plaintiffs. Uber's withdrawal is not a concession regarding the sufficiency of these plaintiffs' PFS submissions and Uber reserves the right to seek dismissal of these plaintiffs' claims based on these and any other PFS deficiencies in the future.

A number of Plaintiffs argue that this Court should deny Uber's motion solely because it did not meet and confer with them pursuant to Local Rule 37-1 before filing it. ECF No. 3781 at 2; ECF No. 3831 at 4; ECF No. 3841 at 2; ECF No. 3843 at 4; ECF No. 3844 at 2; ECF No. 3847 at 9. But under the plain language of the rule, it applies only to "a motion to resolve a disclosure or discovery dispute." L.R. 37-1(a). And courts have been clear that "a motion relating to sanctions pursuant to Rule 37," such as Uber's present motion, is "not a discovery motion." *Endurance Am. Specialty Ins. Co.*, 2011 WL 4841285, at *3. Accordingly, there is "no obligation to meet and confer... before bringing his motion for sanctions." *Johnson*, 2025 WL 2401323, at *2. In fact, the Ninth Circuit has held that any local rule requiring a conference prior to imposition of sanctions under Rule 37 would be inconsistent with that rule and therefore unenforceable. *Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008). Indeed, meeting and conferring over Plaintiffs' failure to comply with this Court's order to submit substantially complete PFS would make no sense, as Uber could not give Plaintiffs permission to violate the Court's order even if it wanted to. *See In re Toy Asbestos*, No. 19-cv-00325-HSG, 2021 WL 1056552, at *3 (N.D. Cal. March 19, 2021) ("The parties are not free to disregard Court orders, whether they agree among themselves or not."); *Brown v. Wescott*, No. C13-369 MJP, 2013 WL 6670252, at *4 (W.D. Wash. Dec. 18, 2013) ("The Parties do not have the power to alter Court orders setting deadlines by entering into side agreements."). Plaintiffs cannot negotiate away their obligations to comply with this Court's order; they have violated PTO 10 and sanctions are appropriate. Nonetheless, Plaintiffs fail to acknowledge that Uber actually offered to meet and confer in the deficiency notices it sent to every plaintiff that is subject to this Motion. While a few Plaintiffs took Uber up on its offer, most actively chose not to do so and now attempt to use their own, conscious inaction to claim Uber violated the rules.

IV. Plaintiffs' arguments that the *Malone* factors do not favor dismissal are unsupported by the law and the facts.

1 **A. The first and second *Malone* factors: Plaintiffs’ failure to comply with PTO 10**
 2 **threatens this Court’s management of its docket and the public interest in**
 3 **expedition in expedition resolution of this case.**

4 Two of the oppositions filed by Plaintiffs address the first two *Malone* factors, the public’s
 5 interest in expeditious resolution of the litigation and the Court’s need to manage its docket. ECF No.
 6 3843 at 6-7; ECF No. 3856 at 3. Both address these factors together rather than separately, so Uber
 7 will do the same.

8 As an initial matter, the Ninth Circuit has squarely held that the first *Malone* factor, the public’s
 9 interest in expeditious resolution of the litigation, “always favors dismissal.” *Pagtalunan v. Galaza*,
 10 291 F.3d 639, 642 (9th Cir. 2002). So Plaintiffs’ assertion, without explanation, that it somehow
 11 “weigh[s] against dismissal with prejudice” in this case is obviously wrong. ECF No. 3843 at 6; ECF
 12 No. 3856 at 3.

13 Beyond that, Plaintiffs argue that it is fine for them to ignore this Court’s orders because the
 14 resulting delays can “be endured” and the court’s docket has not yet “become unmanageable.” ECF
 15 No. 3843 at 6; ECF No. 3856 at 3. But the only case they cite in support of that argument actually
 16 found that the first two *Malone* factors **avored** dismissal for failure to prosecute and **affirmed** the
 17 dismissal of plaintiff’s case. *In re Eisen*, 31 F.3d 1447, 1451-52 & 1456 (9th Cir. 1994). Contrary to
 18 Plaintiffs’ suggestion, courts do not have to permit plaintiffs to ignore their orders and stall cases for
 19 years before they can do anything about it; courts have routinely found that their need to manage the
 20 docket justified dismissal after much shorter periods of delay by plaintiffs. *See, e.g., Temujin Labs*
 21 *Inc. v. Translucence Research, Inc.*, No. 21-cv-9152, 2025 WL 277402, at *2 (N.D. Cal. Jan. 23,
 22 2025); (dismissing with prejudice after three month delay by plaintiffs); *Shanko v. Lake Cnty.*, No. 14-
 23 cv-5543, 2016 WL 9047117, at *2 (N.D. Cal. Feb. 2, 2016) (dismissing with prejudice after failure to
 24 respond to court orders for “a period of months;” allowing plaintiff to “disregard court orders without
 25 consequence may have a broader effect on the Court’s docket if it sends a message to other litigants
 26 that compliance with discovery obligations, case schedules, and court orders is optional”); *Brunt v.*

1 *United States*, No. 21-cv-231, 2021 WL 2670735, at *2 (C.D. Cal. May 14, 2021) (dismissing with
 2 prejudice after three month delay by plaintiff, which “hinders the Court's ability to move this case
 3 toward disposition and indicates that Plaintiff does not intend to litigate this action diligently”).

4 In addition, the Nachawati Law Group’s opposition also suggests that this Court should endure
 5 some Plaintiffs’ delay in complying with PTO 10 in multiple cases because the Nachawati firm has
 6 “already decreased the number of Plaintiffs with overdue fact sheets in a majority of cases that this
 7 issue has been raised.” ECF No. 3843 at 6. But this is not how court ordered obligations work. Non-
 8 compliant Plaintiffs cannot be excused for their failure to produce substantially complete PFS because
 9 other Plaintiffs in other cases have done so any more than Uber could be excused from producing
 10 documents in this case because Lyft has done so in a different sexual assault lawsuit. An MDL is not
 11 a class action and Plaintiffs’ cases remain “fundamentally separate actions,” even where they share
 12 attorneys. *In re Korean Air Lines Co.*, 642 F.3d 685, 700 (9th Cir. 2011). Plaintiffs have individual
 13 court ordered obligations and cannot take advantage of being in an MDL to avoid them. *See Sanchez*
 14 *v. Autozone, Inc.*, No. 14-cv-1347, 2018 WL 6137165, at *5 (C.D. Cal. March 27, 2018). As the Court
 15 put it in *Holley v. Gilead Sciences, Inc.*, MDLs “are not class actions. You have 1,000 clients, roughly.
 16 You have 1,000 clients with 1,000 individual cases. You’re going to have to litigate a thousand
 17 individual cases. There it is. That’s a burden you willingly accepted because you thought it was a good
 18 strategy and, because you’re a profit-making enterprise, you thought you would make more money
 19 that way, I guess.” No. C-18-6972 JST (N.D. Cal. Jan. 21, 2021), Tr. at 12:13-24. The Plaintiffs subject
 20 to this motion have failed to comply with their individual obligations to comply with court orders, and
 21 the first two *Malone* factors both favor dismissal with prejudice.
 22
 23
 24

25 **B. The third *Malone* factor: the fact that other discovery has been stayed heightens**
 26 **rather than diminishes the prejudice to Uber from Plaintiffs’ failure to timely**
 27 **produce substantially complete PFS.**

28 The Nachawati Law Group and Levin Simes both argue that Uber has not been prejudiced by
 Plaintiffs’ failure to produce substantially complete PFS because all other discovery in this case has

1 been stayed, except as to bellwether cases. ECF No. 3843 at 7-8; ECF No. 3856 at 3-4. This gets it
 2 exactly backwards. The stay of discovery actually renders Plaintiffs' deficient PFS **more prejudicial**
 3 to Uber because the PFS provides **the only information** Uber will be able to obtain about the non-
 4 bellwether cases for some time. *See ILWU-PMA Welfare Plan Board of Trustees v. No. 15-cv-2965*,
 5 2017 WL 345988, at *6 (N.D. Cal. Jan 24, 2017) (prejudice established from loss of evidence where
 6 it was not available from other sources); *Bennett-Martin v. San Bernadino Community College*, No.
 7 16-cv-1165, 2018 WL 5919212, at *7 (C.D. Cal. May 15, 2018) (party would "likely suffer substantial
 8 prejudice" where it had "no other source to obtain [sought after] information"). As the Ninth Circuit
 9 has explained in affirming the dismissal of MDL cases with prejudice for failure to produce PFS,
 10 without a complete PFS, a defendant is "unable to mount its defense because it ha[s] no information
 11 about the plaintiff or the plaintiff's injuries outside the allegations of the complaint." *In re PPA*, 460
 12 F.3d at 1234. In other words, defendants are "substantially prejudiced by their inability to learn the
 13 most basic facts about these plaintiffs' claims." *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*,
 14 No. 10-2258, 2012 WL 629747, at *2 (E.D. La. Feb. 27, 2012).

17 Plaintiffs do not even attempt to address most of the cases Uber has cited establishing that
 18 deficient PFS are prejudicial to defendants. ECF No. 3843 at 7-8; ECF No. 3856 at 3-4. They do argue
 19 that *PPA* is distinguishable because the failure to submit a PFS in that case prevented other discovery
 20 deadlines from being triggered, but the court in *PPA* did not rely on that fact at all. Rather, the court
 21 stated that "[f]ailing to produce documents as ordered is considered sufficient prejudice" and "[t]he
 22 law also presumes prejudice from unreasonable delay." *PPA*, 460 F.3d at 1227. It added that "an
 23 involved, complex case increases the prejudice from the delay. Early preparation and participation are
 24 essential in such circumstances." *Id.* at 1228. But regardless, not only have Plaintiffs failed to
 25 distinguish Uber's authority establishing prejudice, they have not pointed to a single case suggesting
 26 that the failure to provide a substantially complete PFS is not prejudicial. ECF No. 3843 at 7-8; ECF
 27 No. 3856 at 3-4. Indeed, Uber is unaware of any case so holding.

The Nachawati firm also argues that it has “mitigated” any prejudice to Uber from being “unable to assess the entire litigation” by “provid[ing] pertinent case information for each Plaintiff.” ECF No. 3843 at 8. But it is absurd to suggest that any information Plaintiffs might provide could take the place of the signed declaration required to accompany the PFS by PTO 10; declarations are “cognizable evidence,” *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629 (9th Cir. 2012), that “provide a basis upon which the court can find that a proffered fact... can be supported at trial by testimonial or other competent evidence,” *Honnevk v. Farmers New World Life Ins. Co.*, No. 1:11–cv–153, 2013 WL 6839605, at *4 (E.D. Cal. Dec. 23, 2013). Nor does any such informally-provided information allow Uber to obtain Plaintiffs medical and/or law enforcement records, as the releases required by PTO 10 as part of a substantially complete PFS would. *See Karnazes v. Cnty. of San Mateo*, No. 09-cv-0767, 2010 WL 1910522, at *6 (N.D. Cal. May 11, 2010). This Court ordered Plaintiffs to timely submit a substantially complete PFS—including answers to all questions, a verification, releases, and an accompanying production of supporting documents—not simply to provide Uber with whatever information they happen to find it convenient to share. The Plaintiffs at issue in this motion have not complied with that order and Uber’s ability to defend itself has been significantly prejudiced.

C. The fourth and fifth Malone factors: Plaintiffs’ failure to comply with the Court’s order overrides the public policy favoring disposition on the merits, and no less drastic sanction is available.

Plaintiffs’ oppositions cite to the general policy in favor of disposing of cases on the merits rather than by default judgment. ECF No. 3843 at 8; ECF No. 3856 at 4. Although Plaintiffs are correct that disposition on the merits is generally preferred, in cases like this one, a “Plaintiff’s inaction outweighs merit-based preference.” *Torres v. General Motors LLC*, No. 24-cv-02474-BEN-JLB, 2025 WL 1435524, at *2 (S.D. Cal. May 16, 2025); *see also Collins v. Laborers Int’l Union of N. Am.*, No. 24-3937, 2025 WL 1895310, at *2 (9th Cir. July 9, 2025) (“the district court did not abuse its discretion

1 in determining the factors supporting dismissal outweighed the public policy favoring disposition on
2 the merits”).

3 And despite Plaintiffs’ contrary arguments (ECF No. 3843 at 9; ECF No. 3856 at 4-5),
4 dismissal is not too drastic a sanction in this case. This Court entered its order requiring Plaintiffs to
5 file substantially complete PFS more than a year ago. All of the Plaintiffs whose cases remain at issue
6 have received a Deficiency Notice informing them of the reasons their PFS are not substantially
7 complete. Courts have recognized that dismissal is an appropriate remedy where a party has previously
8 been warned about its non-compliance with a court order and still failed to comply. *Degrelle v. Simon*
9 *Wiesenthal Center*, 883 F.2d 1023 (9th Cir. 1989); *Hilton v. Pagani Worldwide LLC*, No. 19-cv-
10 01848-VC, 2020 WL 2528935, at *4 (N.D. Cal. April 16, 2020); *Jackson v. United States*, 116 F.3d
11 484, 484 (C.D. Cal. June 5, 1997).
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13
14 Plaintiffs also appear to argue that dismissal is inappropriate because they are not “unwilling”
15 to comply with this Court’s order or simply “refusing” to do so, but rather have vague excuses for
16 their noncompliance. ECF No. 3843 at 3; ECF No. 3856 at 1. But for the failure to comply with a court
17 order to be willful, and dismissal to be appropriate, “the failure need not necessarily be accompanied
18 by wrongful intent.” *Horsley v. United States*, No. 83-cv-0102, 1985 WL 2655, at *4 (N.D. Cal. June
19 5, 1985). “Disobedient conduct not shown to be outside the litigant’s control meets this standard.”
20 *Fair Hous. of Marin v.*, 285 F.3d at 905. There is nothing in the record to suggest that Plaintiffs failed
21 to meet their deadlines to produce ride receipts or information forms due to circumstances beyond
22 their control. *See Hilton v. Pagnini Worldwide LLC*, No. 19-cv-1848, 2020 WL 2528935, at *2 (N.D.
23 Cal. April 16, 2020). Indeed, Plaintiffs’ Oppositions fail to allege facts specific to any individual
24 Plaintiff to explain the failure to produce; they offer only “vague [and hypothetical] excuses” about
25 changing contact information of the type courts have previously been “unmoved by.” *United States v.*
26 *Passegger*, No. 5:22-cv-875, 2025 WL 2074359, at *2 (C.D. Cal. March 6, 2025). Because Plaintiffs
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1 have not shown their failure to abide by this Court’s discovery order was outside of their control,
 2 dismissal with prejudice is appropriate. *See Ruelas v. Alameda Cnty.*, No. 19-cv-07637, 2023 WL
 3 8173675, at *3 (N.D. Cal. April 14, 2023).

4 The Nachawati Plaintiffs also argue that dismissal “is particularly punitive in light of the nature
 5 of Plaintiffs’ claims, which all stem from the sexual assault or sexual misconduct.” ECF No. 3843 at
 6 9. But Rule 41 does not excuse plaintiffs from following court rules and prosecuting their cases simply
 7 because they have made serious factual allegations, and sexual assault cases are not immune from
 8 dismissal. *See Young v. Cnty. of Alameda*, No. 24-cv-3914, 2025 WL 1237558, at *5 (N.D. Cal. April
 9 28, 2025) (noting, in case involving sexual assault allegations, that failure to comply with court orders
 10 “will result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
 11 Procedure 41(b)”; *Fimbres v. Fresno Cnty. Jail*, No. 1:24-cv-1462, 2025 WL 1506225, at *6 (E.D.
 12 Cal. May 27, 2025) (dismissing case including sexual assault claim with prejudice for failure to
 13 prosecute); *Catalan v. Hill*, No. 22-cv-0062, 2024 WL 5185635, at *4 (C.D. Cal. Aug. 26, 2024)
 14 (same). “The Rules of Civil Procedure... apply by their own force to all litigants before the court.”
 15 *Mattingly v. United States*, 939 F.2d 816, 818 (9th Cir. 1991). Plaintiffs have come before this Court
 16 making serious allegations and seeking significant relief; they cannot ignore their Court-imposed
 17 obligations, no matter how inconvenient they may find them. *See Capolupo v. Ellis*, No. 18-cv-07458-
 18 RMI, 2019 WL 2327883, at *7 (N.D. Cal. May 31, 2019).

21 CONCLUSION

22 Plaintiffs’ failure to comply with court orders and rules continues, with some Plaintiffs even
 23 failing respond to Uber’s motion to dismiss their cases. Some of those Plaintiffs who have responded
 24 raise procedural objections, but these are inconsistent with the plain language of the rule they rely on
 25 and the case law interpreting it. Other Plaintiffs attempt to rebut Uber’s showing that the Malone
 26 factors favor dismissal, but they lack supporting legal authority and raise only vague factual excuses.
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1 This Court should take the same approach as other MDL courts faced with plaintiffs' willful failure to
2 comply with court orders and dismiss these Plaintiffs' claims with prejudice.

3
4 Dated: September 12, 2025

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